

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of _____
Broadcast Localism _____

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) MB Docket No. 04-233
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To: The Commission

Comments of Frances S. Smith d/b/a National Cable Network, Inc.

Frances S. Smith d/b/a National Cable Network, Inc. (“NCN”) hereby files comments in response to the FCC’s *Report on Broadcast Localism and Notice of Proposed Rulemaking* (“*Localism NPRM*”) issued on January 24, 2008. In this Localism NPRM, the Commission requested comment on its proposals that it feels are designed to ensure that broadcasters appropriately and adequately address the needs of their local communities.¹ NCN respectfully requests that the Commission consider implementing the rules, policies, and procedures that it proposes below in addition to or in lieu of the proposed rules set forth in the NPRM.

Background

NCN is the licensee of low power television (LPTV) station WKFK-LP, Pascagoula, Mississippi. NCN built the station from the ground up, including obtaining the permit, and has been operating the station continually since July 2002. In keeping with the mandate of the LPTV service to provide local programming to underserved communities, WKFK-LP meets the programming needs of its small community of Pascagoula with large swaths of time dedicated solely to local programming that is produced and originated in Pascagoula and the surrounding

¹ *In the Matter of Broadcast Localism*, Report on Broadcast Localism and Notice of Proposed Rulemaking, MB Docket No. 04-233, FCC 07-218 (rel. January 24, 2008).

communities. The station has already been recognized by the Commission as providing programming that the full-power stations do not as evidenced by the Media Bureau's decision granting WKFK-LP must-carry status on a local cable system in several of the communities that it serves.² In granting the petition, the Media Bureau specifically found that "WKFK-LP provides locally-focused programming to Pascagoula and nearby communities."³ NCN fully intends to continue providing large amounts of its high-quality local programming for as long as it is a licensee.

Comments

I. Station personnel already appropriately assess and address the local community's needs via existing methods of contact with community officials and leaders, negating the need for a permanent advisory boards of local officials and leaders.

As an LPTV serving a small community, NCN believes that the FCC should allow stations to continue to utilize their current formal and informal community contact procedures to ascertain their communities' broadcast needs and preferences. NCN already encourages its viewers to contact it and finds the e-mails, faxes, letters, phone calls, and other informal contacts between station personnel and community members to be valid and valuable resources to assess the community's needs. WKFK-LP then addresses the needs that are identified through these contacts in its programming. Indeed, the Commission noted in the *Localism NPRM* that many broadcasters like NCN experience success in this endeavor utilizing such informal means.⁴

NCN fully supports the Commission's suggestion that community issues and needs require a conduit whereby they can consistently reach broadcasters.⁵ However, NCN disagrees that the proposed rules will have this effect, much like the Commission opined two decades

² See *In the Matter of Frances S. Smith d/b/a NCN Cable Advertising v. Cable One, Inc.*, 18 FCC Rcd 9970 (2003).

³ *Id.* at 9974.

⁴ See *Localism NPRM* at ¶ 27.

earlier. In its 1984 Order dispensing with formal ascertainment procedures, the Commission stated plainly it had “no evidence” that such formal efforts “ensur[ed] that licensees actively discovered the problems, needs and issues facing their communities, thereby positively influencing the programming performance of stations by affecting the process of program decision-making.”⁶ Moreover, the Commission noted that formal “ascertainment is not mandated by the statute and is not an exclusive way to assure that licensees remain aware of their communities.”⁷ Ultimately, the Commission concluded that, by forcing licensees to comply with formal ascertainment requirements, station resources were wasted that could have been used to produce broadcasts responsive to community needs.⁸

Then as now, significant monitoring procedures, other than formal ascertainment, are available to address licensees’ compliance with mandates to meet community needs, such as citizen complaints and formal petitions to deny.⁹ These are important Commission tools to monitor such compliance.¹⁰ Further, LPTV stations like WKFK-LP are only allowed carriage rights on cable systems if they have a commitment and adherence to providing local service.¹¹

⁵ *Id.* at ¶ 26.

⁶ *The Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 56 RR 2d 1005, 1022, ¶ 48 (1984).

⁷ *Id.* at 1023, ¶ 50.

⁸ *Id.* at 1024, ¶ 53.

⁹ *See Id.* at 1007 ¶ 3.

¹⁰ NCN recognizes the Commission’s concern that “many listeners and viewers know little about Commission processes, such as . . . complaint procedures.” *Localism NPRM* at ¶ 2. However, NCN suggests that general and periodic public broadcast notices, as opposed to formal ascertainment, are a potential vehicle to increase the public’s awareness regarding the availability of such procedures to address concerns about a station’s operations. Further, the Commission has already directed that the Media Bureau update “The Public and Broadcasting” to include information in an “easy-to-read” format regarding Commission processes and procedures, such as complaints and the license renewal process. *See Localism NPRM* at ¶ 18. Finally, it also bears noting that the license renewal process occurs only once every eight years. If this is the time in which the majority of complaints are filed, then it would seem as if this is the only time that complaint information is relevant to viewers. Therefore, formal, on-going ascertainment procedures are not necessarily the best and most efficient way to inform listeners and viewers regarding Commission processes and procedures.

¹¹ *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order, 8 FCC Rcd 2965, 2981 at ¶ 62 (rel. March 29, 1993) (“[A]n LPTV station will not be qualified unless the Commission determines that the provision of programming by such station would address local news and

Thus, there are already sufficient safeguards in place to make sure that LPTVs like WKFK-LP fulfill their mandate to provide local programming to their audiences.

Therefore, NCN requests that broadcast licensees be permitted to continue their informal community contacts and that the Commission consider these efforts sufficient ascertainment activities such that formal ascertainment is not required or called for. Station resources may then be focused on producing programming responsive to the community instead of on technical compliance issues that may or may not have the desired result.

II. Minimum reporting requirements for local broadcasting should be specified in hours per week.

NCN fully supports the adoption of guidelines that require minimum amounts of local programming and the use of those guidelines in the processing of renewal applications.¹² In response to the Commission's question, NCN prefers that these programming reports should specify hours-per-week of local programming as opposed to a long list of individual subjects. As a licensee, NCN is already responsible for completing and filing several FCC reports in a given year, all of which require time and valuable station resources to complete. Although NCN has and will continue to comply fully with its reporting responsibilities, having to complete another report that requires tedious and meticulous recitation of every program aired in response to a long list of individual subjects will require even more time be devoted to reporting - time which could be used to create more programs.

Instead, NCN proposes that licensees be allowed to document their local programming in terms of hours per day rather than by program subject listings because it is a more efficient use of already-limited resources, particularly for an LPTV like WKFK-LP. NCN recognizes that

information needs [of the community] not being adequately served by full power television stations because such full power stations are distant from the LPTV station's community of license.")

stations that broadcast only a few hours per week may find subject listing preferable. However, NCN broadcasts several hours *per day* of local programming on WKFK-LP and suggests that, for itself and similarly situated broadcasters, documenting its programming in hours per week is a more efficient and better use of its resources.

III. The Commission has the statutory authority to allow additional qualified LPTV stations to be granted Class A status and should use that authority to authorize new conversions of LPTV stations to Class A.

NCN strongly supports the Commission's tentative conclusion that additional qualified LPTV stations be granted Class A status.¹³ Unfortunately, NCN did not obtain the permit to build WKFK-LP until 2002, well beyond the Commission's early-2000 deadline for Class A TV eligibility, and thus was unable to take advantage of the conversion process.¹⁴ However, NCN has since built, launched, and operated WKFK-LP with a commitment to providing local programming that is responsive to its community's needs in accordance with the Class A requirements.¹⁵ If the Commission grants Class A status to WKFK-LP and other similarly qualified LPTV stations that are strongly committed to local programming, the Commission will be able to further its commitment to promoting diversity and localism in television broadcasting while providing local service to underserved areas.¹⁶

¹² See *Localism NPRM* at ¶ 124.

¹³ *Id.* at ¶ 141.

¹⁴ See 47 C.F.R. § 73.6002.

¹⁵ See 47 C.F.R. § 73.6001(b) (specifying Class A TV stations must broadcast a minimum of 18 hours per day and an average of 3 hours of locally produced programming per week).

¹⁶ See *In the Matter of Establishment of a Class A Television Service*, Report and Order, MM Docket 00-10, 15 FCC Rcd 6355, 6357 at ¶ 1 (rel. April 4, 2000) (hereinafter "*Class A Order*").

A. The Commission has the statutory authority to grant further LPTV to Class A status changes.

The Commission possesses the statutory authority to grant Class A status to LPTV stations. Notwithstanding express deadlines for Class A eligibility specified in the statute¹⁷ and in the Commission's implementing regulations,¹⁸ the statute does allow the Commission to establish alternative Class A eligibility criteria if, "the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission."¹⁹ Further, the Commission noted in the *Class A Order* that the CBPA did not prohibit the Commission from accepting applications for Class A status beyond 30 days after the Commission adopted its "final" rules.²⁰ Moreover, although the CBPA and the rules restrict Class A eligibility to licensees that were current as of 2000,²¹ there is no express provision in either the CBPA or the Commission's rules that excludes future LPTV stations, which in the Commission's discretion otherwise meet Class A eligibility criteria, from consideration. Therefore, NCN submits that the Commission has the statutory authority to grant Class A status to qualified LPTV stations, including WKFK-LP.

B. Eligibility criteria for LPTVs seeking Class A status should be strengthened.

NCN recognizes that, despite the present Class A eligibility standards, if the Commission allows further Class A status applications, it may be faced with a flood of qualified LPTV stations. NCN recommends several additional qualifications for proposed LPTV conversion applicants that are designed to keep the number of applicants to a manageable size as well as

¹⁷ See 47 U.S.C. § 336(f) (Community Broadcasters Protection Act of 1999 (CBPA)).

¹⁸ See 47 C.F.R. § 73.6002.

¹⁹ 47 U.S.C. § 336(f)(2)(B). See also, 47 U.S.C. § 309(a) (giving the Commission the authority to grant broadcast applications if granting of such would serve the public interest, convenience, and necessity).

²⁰ *Class A Order* at 6361 ¶ 10.

²¹ See 47 U.S.C. § 336(f); see 47 C.F.R. § 73.6002.

maintain the high quality of the overall service. Specifically, NCN proposes that LPTV stations submitting applications for Class A status must commit to broadcast 24 hours a day, 7 days a week as well as commit to broadcasting a minimum of one and one-half to two hours of local programming per day. NCN would have no trouble fulfilling this requirement as many local groups, such as foundations, churches, and other service organizations, are eager to provide local programming to WKFK-LP. Indeed, NCN currently broadcasts an average of 3.2 hours per day already. In addition, WKFK-LP includes crawls of several minutes in length, and total an hour daily, which announce and describe local activities, such as local sporting and civic events. These crawls underscore WKFK-LP expansive commitment to local issues and programming.

Requiring this very high level of commitment to local programming may very well serve to reduce the number of LPTVs which would seek Class A status within a new window of opportunity while ensuring that those that do seek Class A conversion are qualified and can provide the best level of local service to the most underserved populations.

IV. A more restrictive local main studio rule should be applied to the Commission's future grant of broadcast authorizations.

NCN's comments with respect to the main studio rule amendment that is being discussed are solely addressed to future broadcast authorizations, not to currently licensed or applied-for stations. With respect to the main studio proposal, NCN supports a more restrictive application of the main studio rule, again for future broadcast authorizations. Although the existing main studio rules allow for few exceptions,²² a narrow interpretation of the "good cause" exception²³ by the Commission in its future review of new broadcast authorization requests may promote its goal of increasing broadcast localism. NCN suggests that, in the future, when a licensee seeks a

²² See 47 C.F.R. § 73.1125(b).

²³ 47 C.F.R. § 73.1125(b)(2).

main studio waiver for its station, the licensee should commit to and demonstrate that the station will provide local programming, such as local news and local events, in order to be granted such a waiver. By requiring the licensees who seek a waiver of the main studio requirement to make this showing, the Commission can ensure that the community is still being provided with local programming, while obviating the need to make sweeping changes to the main studio rules as they apply to current licensees or those who have already applied for new authorizations.

V. The Commission’s existing procedures for public notice of renewal applications are sufficient.

The Commission’s current “pre-filing” and “post-filing” broadcast on-air announcements²⁴ are more than sufficient to provide TV viewers with information regarding the license renewal application process. The Commission’s proposed expansion of such announcements to a station’s website presumes that if such information is available online, community residents will want to locate it online. NCN suggests that the vast majority of viewers are not concerned with information on websites that do not capture their interest. Further, NCN proposes that viewers are not going seek out information related to compliance with FCC rules and regulations on a station’s website. Therefore, NCN predicts that viewers will not seek out nor be interested in those sections of stations’ websites which are clogged with regulatory compliance information. NCN supports the Commission’s present rules regarding on-air pre-filing and post-filing announcements and posits that the presumed benefits of expanded rules will not justify the additional regulatory burden on licensees.

VI. The Commission should set rules that allow network affiliates adequate lead time to review programming networks submit for broadcast.

NCN fully supports the Commission’s regulatory goal of placing ultimate responsibility

²⁴ See 47 C.F.R. § 73.3580(d)(4).

for aired programming on network affiliates.²⁵ For example, the “right-to-reject” rule²⁶ was enacted to ensure that licensees retain adequate control over their stations’ broadcast to fulfill their obligations to operate in the public interest.²⁷ The Commission interpreted such station “control” as meaning that “a licensee must preserve its ability to exercise full responsibility over all matters involving the operation of its station.”²⁸

NCN embraces its responsibility for the programming aired on WKFK-LP. NCN encourages and agrees with the Commission’s suggestion to adopt rules that require networks to provide minimum lead time prior to broadcast so that network affiliates can review the suitability of the network-supplied programming.²⁹ In light of the Commission’s ongoing concerns regarding indecency and localism in programming, adequate review time will allow network affiliates to “filter out” network programs that do not meet indecency, localism, public interest, and licensee-specific standards. Since networks prepare programs many days, weeks, and possibly months, prior to suggested airing, allowing licensees time to review programming prior to broadcasting it should not be an onerous burden on networks.

Finally, the Commission has the statutory authority to impose such advance review rules.³⁰ Such regulation is within the Commission’s statutory purpose, which is to ensure that broadcast stations serve the public interest, convenience, and necessity.³¹ Further, Congress mandates that the Commission make rules from time to time as public interest, convenience, and

²⁵ See *Localism NPRM* at ¶ 88.

²⁶ 47 C.F.R. § 73.658(e).

²⁷ *Review of the Commission’s Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates* 47 C.F.R. Sec. 73.658(a), (b), (d), (e) and (g), Notice of Proposed Rulemaking, 10 FCC Rcd 11951, 11961-11962 ¶ 21 (rel. June 15, 1995).

²⁸ *Id.* at 11962 ¶ 21.

²⁹ See *Localism NPRM* at ¶ 96.

³⁰ See *Id.* (requesting comment on whether the Commission has the statutory authority to act on advance review).

³¹ See 47 U.S.C. § 309(a).

necessity require, within which this rule would squarely fall.³² Advance review rules will assist network affiliates in ensuring that programming ultimately aired is in the public interest.

VII. Conclusion

In conclusion, NCN respectfully requests that the Commission consider and adopt these suggestions to facilitate an efficient and cost-effective broadcast localism process.

Respectfully submitted:

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Dated: April 9, 2008

³² 47 U.S.C. § 303(r).